

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Donniel Thomas,

Plaintiff,

Case No. 22-13025

Hon. Jonathan J.C. Grey

v.

Calleen Troyer et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Donniel Thomas brought this complaint as a pro se prisoner against Calleen Troyer and three John Does under 42 U.S.C. § 1983. (ECF No. 1.) Thomas alleges that the defendants acted with deliberate indifference to his medical needs in violation of the Eighth Amendment. This case was referred to United States Magistrate Judge Elizabeth A. Stafford. Judge Stafford issued a report and recommendation to dismiss the case for failure to prosecute and to deny defendant's motion for summary judgment as moot. (ECF No. 17.) No objections were filed. For the reasons that follow, the Court **ADOPTS** Judge Stafford's report and recommendation.

A party may object to any specified portion, proposed findings, or recommendation in the magistrate judge's report. 28 U.S.C. § 636(b)(1). For any specific objection, the district judge is to make a de novo determination of the issue. *Id.* The district judge may accept, reject, or modify, in whole or in part, any findings or recommendations. *Id.*

When no objection is made to portions of a report and recommendation, the district judge may sua sponte review those portions, *Thomas v. Arn*, 474 U.S. 140, 154 (1985); however, there is no obligation to independently review unobjected portions. *Hall v. Chapman*, 627 F. Supp. 3d 804, 806 (E.D. Mich. 2022) (citing *Thomas* 474 U.S. at 149–52). Under sua sponte review, with no objection, the district judge may use a “de novo or any other standard.” *Thomas*, 474 U.S. at 154.

On September 28, 2023, Judge Stafford issued an order for Thomas to respond to Troyer's motion for summary judgment, and the order contained a certificate of service by mail. (ECF No. 18.) On October 5, 2023 and October 12, 2023, the Court received two notices that the mail had returned undeliverable to Thomas at his listed prison address. (ECF Nos. 19, 20.) Judge Stafford issued an order for Thoms to show cause why

his case should not be dismissed for failure to prosecute on October 24, 2023. (ECF No. 21.) The Court received another notice of mail returned undeliverable for the order to show cause. (ECF No. 22.) When Thomas failed to respond to the order to show cause by the deadline of November 14, 2023, Judge Stafford issued a report and recommendation to dismiss plaintiff's complaint for failure to prosecute under Federal Rule of Civil Procedure 41(b). The Court then received another notice of mail returned undeliverable for the report and recommendation. (ECF No. 24.)

After reviewing the report and recommendation, the Court finds that it is well-reasoned and supported by the applicable law. Since Thomas has failed to update his address, the Court has no way of communicating with him. Thomas has also shown a failure to stay involved with the case; the last time he participated was during early mediation on July 18, 2023. Thomas has failed to prosecute his claim by failing to update his address, to respond to an order to show cause, or to generally involve himself in this case.¹ For these reasons, the Court

¹ This case is distinguished from examples where a prisoner defendant has only failed to respond to a motion but is otherwise prosecuting his case. *Cf. Carver v. Bunch*, 946 F.2d 451, 454–55 (6th Cir. 1991) (holding that failure to respond is not an independent basis to dismiss a case); *Green v. City of Southfield*, 759 F. App'x 410, 417 (6th Cir. 2018). Here, Thomas has failed to prosecute in multiple ways, including not responding to the motion or order to show cause.

ADOPTS Judge Stafford's report and recommendation. Thomas' case is **DISMISSED WITHOUT PREJUDICE**. Troyer's motion for summary judgment (ECF No. 17) is **DENIED AS MOOT**.

SO ORDERED.

Dated: July 1, 2024

s/ Jonathan J.C. Grey
Hon. Jonathan J.C. Grey
United States District Judge

Certificate of Service

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First-Class U.S. mail addresses disclosed on the Notice of Electronic Filing on July 1, 2024.

s/ S. Osorio
Sandra Osorio
Case Manager